## UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

2

1

MARCELO MUTO, NOAH BREEZE, JOHN DOE 1, JOHN DOE 2, and all others similarly situated,

Plaintiffs,

v.

FENIX INTERNATIONAL LIMITED; FENIX INTERNET LLC,

Defendants.

CASE NO. 5:22-cv-02164-SSS-KK

DECLARATION OF LEE TAYLOR IN SUPPORT OF DEFENDANTS FENIX INTERNATIONAL LIMITED AND FENIX INTERNET LLC'S MOTION TO DISMISS (REDACTED)

Judge: Hon. Sunshine S. Sykes

I, Lee Taylor, declare and state as follows:

- 1. I am the Chief Financial Officer and a Director of Fenix International Limited ("FIL"). I have been in that position since December 2021. In this role, I oversee the finances of FIL and its subsidiaries, including Fenix Internet LLC ("Fenix Internet"). Before assuming the role of CFO and Director, I was the Financial Controller of FIL from 2019 to 2021.
- 2. I make this declaration based on my personal knowledge and/or knowledge acquired through reasonable investigation. In preparation of this Declaration, I reviewed certain of FIL's internal records related to the registration of OnlyFans accounts and account activity of the Plaintiffs, which were created and maintained in the course of regularly-conducted business. I could competently testify to the matters set forth herein if called to do so as a witness in court.

23

- 3
- 5
- 6

8

9

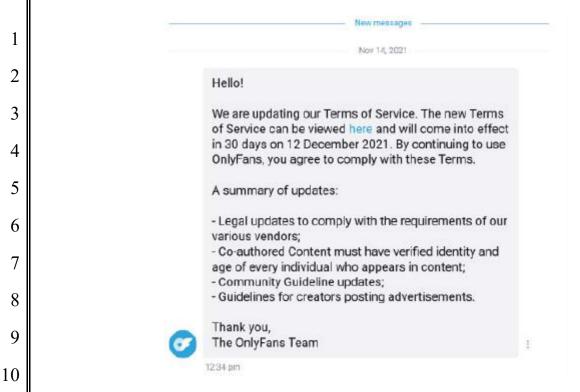
- 10
- 11
- 12
- 13
- 14
- 15

- 17
- 18 19
- 2021
- 22
- 2324

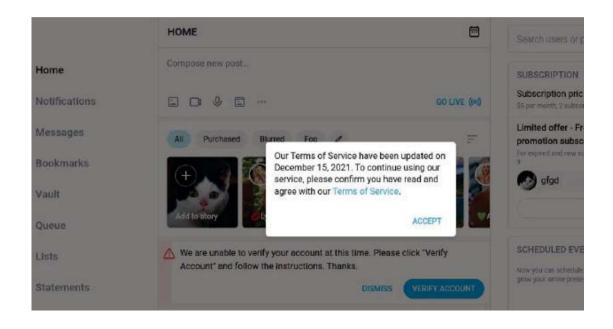
- 3. FIL is incorporated and registered in England and Wales, with its headquarters in London. FIL owns and operates OnlyFans.
- 4. Fenix Internet is a Delaware limited liability company, with its principal place of business at 501 Silverside Road, Suite 87AXK, Wilmington, Delaware, 19809.
- 5. Fenix Internet does not operate OnlyFans. Fenix Internet does not have or pay for servers of its own, does not own any intellectual property or trademarks related to OnlyFans, and is not responsible for the day-to-day operations of OnlyFans.
- 6. Fenix Internet's purpose is to perform payment and administrative support services for FIL, the operator of OnlyFans. In this role, Fenix Internet facilitates some of the payments between users/subscribers ("Fans") and content creators ("Creators"). Specifically, at FIL's direction, Fenix Internet collects from third-party processors payments made by Fans and distributes the money it collects through other third-party processors to Creators.
  - 7. Neither FIL nor Fenix Internet has any offices or employees in California.
- 8. Neither FIL nor Fenix Internet engages in marketing, sales, or commercial activity targeted specifically at California residents.
- 9. Neither FIL nor Fenix Internet engages in any marketing, sales or commercial activity in California related to the allegations in the Consolidated Class Action Complaint ("CAC").
- 10. Neither FIL nor Fenix Internet is registered to do business in California.

  Neither FIL nor Fenix Internet has a registered agent for service of process in California.

- 11. I have been informed that a search of the California Secretary of State website returns a company named "Fenix Internet LLC" that was formed in California. That company has no relationship to OnlyFans, FIL, or the Fenix Internet LLC named in the CAC.
- 12. FIL's Terms of Service govern the legal relationship between OnlyFans and Creators and Fans that use OnlyFans. Anyone who is a Creator or Fan on OnlyFans must agree to the Terms of Service prior to opening an account in OnlyFans. The Terms of Service state that by registering with and using OnlyFans, all Creators and Fans have accepted and agreed to be bound by and abide by the Terms of Service. The Terms of Service include a forum selection clause requiring that any dispute concerning the OnlyFans website and related services must be resolved in the courts of England and Wales.
- 13. At all times, the Terms of Service have been posted in their entirety and are readily available on OnlyFans.
- 14. Based on a review of FIL's data and records, Plaintiff Marcelo Muto joined OnlyFans as a Fan on December 12, 2019, as User No. 16405711, and selected the User name "Fucker." A true and correct copy of the Terms of Service that were posted on OnlyFans and in effect on December 12, 2019, is attached hereto as Exhibit A.
- 15. Based on a review of FIL's data and records, Plaintiff Noah Breeze joined OnlyFans as a Fan on February 10, 2020, as User No. 21003986, and selected the User name "Mrbigdick666." The Terms of Service attached hereto as <u>Exhibit A</u> continued to



21. In addition to the above message, the first time OnlyFans users logged into their OnlyFans account on or after December 15, 2021, they were presented with the following alert, which would have occurred immediately after logging into their account:



9

- 22. After being presented with the above alert, an OnlyFans user—including the Plaintiffs—would have been unable to continue using the OnlyFans website unless they clicked "ACCEPT." Had a user clicked on the blue hyperlinked words "Terms of Service" shown in the above image, he or she would have been taken to a full copy of the Terms of Service containing the December 15, 2021, amendments.
- 23. Mr. Muto accepted the December 15, 2021, amendments on December 25, 2021, at 09:16 a.m. (GMT). A true and correct copy of a screenshot from OnlyFans' administrative system showing when Mr. Muto (OnlyFans User name "Fucker") logged on and accepted the December 15, 2021 amendments is attached hereto as Exhibit E.
- 24. Mr. Breeze accepted the December 15, 2021, amendments on December 21, 2021, at 10:21 p.m. (GMT). A true and correct copy of a screenshot from OnlyFans' administrative system showing when Mr. Breeze (OnlyFans User name "Mrbigdick666") logged on and accepted the December 15, 2021, amendments is attached hereto as Exhibit F.
- 25. John Doe 1 accepted the December 15, 2021, amendments on January 18, 2022, at 3:15pm (GMT). A true and correct copy of a screenshot from OnlyFans' administrative system showing when John Doe 1 (OnlyFans User name " logged on and accepted the December 15, 2021, amendments is attached hereto as Exhibit G.
- 26. John Doe 2 accepted the December 15, 2021, amendments on December 18, 2021, at 8:36pm (GMT). A true and correct copy of a screenshot from OnlyFans' administrative system showing when John Doe 2 (OnlyFans User name "

23

18

19

20

21

3

- 5
- 7
- 8
- 10
- 11 12
- 13
- 14
- 15
- 16 17
- 18
- 19
- 21

20

- 22
- 23 24

- logged on and accepted the December 15, 2021, amendments is attached hereto as Exhibit H.
- 27. Plaintiffs each continued to use OnlyFans after accepting the December 15, 2021, amendments to the Terms of Service.
- Because OnlyFans is an international content-sharing social media 28. platform domiciled in the United Kingdom with millions of participants located around the world, it is concerned that the Terms of Service are uniformly and authoritatively enforced as to all of its Creators and Fans. As a result, the Terms of Service have always included a forum selection clause requiring that any dispute concerning OnlyFans between FIL and the millions of Creators and Fans participating on the OnlyFans website and related services must be resolved in the courts of England and Wales.
- 29. FIL and Fenix Internet agree to stipulate to personal jurisdiction and service in England and Wales if Plaintiffs voluntarily pursue this suit in the courts of England and Wales.
- FIL and Fenix Internet agree to toll any applicable statutes of limitation 30. from the date that Plaintiffs first filed this action for a period of 180 days after dismissal.

## Plaintiffs' Subscription Activity on OnlyFans

31. Mr. Muto alleges that he subscribed to follow the account of OnlyFans Creator, "@tasteofheaven," in February 2021. He further alleges that he was charged a \$29.99 subscription renewal fee on or about March 14, 2021.

- 32. A true and accurate copy of Mr. Muto's transaction history as of October 23, 2022 (under his OnlyFans User name "Fucker") is attached hereto as Exhibit I.
- 33. Mr. Muto's transaction history shows that prior to subscribing to follow OnlyFans Creator, @tasteofheaven, in February 2021, Mr. Muto subscribed to and disabled renewal for 22 subscriptions to other OnlyFans Creators prior to the subscription renewal date.
- 34. These 22 subscriptions, and the dates and times (all in GMT) when Mr. Muto subscribed to and subsequently disabled renewal for them, are as follows:

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
1.		12/12/2019 14:56	12/12/2019 18:08
2.		3/18/2020 19:51	3/18/2020 20:01
3.		4/15/2020 14:38	4/15/2020 15:07
4.		4/19/2020 14:34	4/19/2020 14:36 (listed twice)
5.		5/22/2020 13:28	5/22/2020 13:35
6.		7/12/2020 14:29	7/14/2020 5:59
7.		7/12/2020 22:10	7/14/2020 5:59
8.		7/20/2020 7:02	8/5/2020 22:06
9.		8/5/2020 22:07	8/5/2020 22:09
10.		8/12/2020 14:02	8/14/2020 14:43
11.		8/16/2020 17:42	8/16/2020 20:06
12.		9/11/2020 20:45	9/11/2020 20:46
13.		10/19/2020 13:02	10/19/2020 13:02

1
2
3
4
5
6
7
8
9
10
11
12

14

15

16

17

18

19

20

21

22

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
14.		11/8/2020 8:55	11/8/2020 8:55
15.		11/14/2020 0:44	11/14/2020 0:44
16.		12/11/2020 2:46	12/11/2020 2:46
17.		12/15/2020 6:59	12/15/2020 6:59
18.		1/2/2021 11:42	1/2/2021 11:51
19.		1/17/2021 4:26	1/17/2021 4:26
20.		1/17/2021 9:40	1/17/2021 9:40
21.		1/19/2021 14:16	1/19/2021 14:16
22.		1/29/2021 9:21	1/29/2021 9:22

35. In addition, after Mr. Muto subscribed to @tasteofheaven, he proceeded to subscribe to and disable renewal for 8 more subscriptions prior to the subscription renewal date.

36. These 8 subscriptions, and the dates and times (all in GMT) when Mr. Muto subscribed to and subsequently disabled renewal for them, are as follows:

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
1.		2/22/2021 3:39	2/22/2021 3:39
2.		3/11/2021 13:06	3/11/2021 13:06
3.		3/22/2021 1:54	3/22/2021 1:55
4.		3/23/2021 18:02	3/23/2021 18:02

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
5.		3/25/2021 14:29	3/25/2021 14:30
6.		3/25/2021 14:34	3/25/2021 14:34
7.		3/29/2021 20:43	3/29/2021 20:44
8.		4/3/2021 14:01	4/3/2021 14:01

- 37. Mr. Breeze alleges he subscribed to follow the account of OnlyFans Creator called "@cheriedeville." He further alleges that he was charged a \$14.99 subscription renewal fee on or about January 24, 2022.
- 38. A true and accurate copy of Mr. Breeze's transaction history as of January 9, 2023 (under his OnlyFans User name "Mrbigdick666"), is attached hereto as Exhibit J.
- 39. Mr. Breeze's transaction history shows that he first subscribed to OnlyFans creator, "Cherie Deville," on August 26, 2020. Mr. Breeze's transaction history also shows that Mr. Breeze's subscription to "Cherie Deville" renewed on September 26, 2020. Mr. Breeze's transaction history shows that Mr. Breeze elected to disable renewal for his subscription to Cherie Deville on October 4, 2020. Mr. Breeze's transaction history shows that on November 24, 2021, Mr. Breeze re-subscribed to Cherie Deville and that on December 24, 2021, the subscription renewed. Mr. Breeze's transaction history then shows that the subscription renewed again on January 24, 2022.
- 40. Mr. Breeze's transaction history also shows that prior to subscribing to Cherie Deville on August 26, 2020, Mr. Breeze subscribed to and disabled renewal for subscriptions to 3 other OnlyFans Creators prior to the subscription renewal date.

41. These 3 subscriptions, and the dates and times (all in GMT) when Mr. Breeze subscribed to and subsequently disabled renewal for them, are as follows:

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
1.		3/26/2020 8:07	3/27/2020 5:48
2.		3/27/2020 5:47	3/27/2020 5:47
3.		6/11/2020 16:53	6/11/2020 17:05

42. In addition, after subscribing to Cherie Deville on August 26, 2020, Mr. Breeze subscribed to and disabled renewal for 5 other subscriptions to OnlyFans Creators prior to the subscription renewal date.

43. These 5 subscriptions, and the dates and times (all in GMT) when Mr. Breeze subscribed to and subsequently disabled renewal for them, are as follows:

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
1.		9/7/2020 0:17	9/7/2020 0:32
2.		9/7/2020 5:30	10/4/2020 21:42
3.		2/27/2021 12:09	2/27/2021 12:25
4.		3/3/2021 10:54	3/3/2021 10:56
5.		3/22/2021 9:55	3/27/2021 18:25

44. John Doe 1 alleges that in March 2022 he paid an initial fee of \$3.89 for "Creator 1" content, and that this subscription renewed over the course of approximately four months, for a total charge of approximately \$15.56.

1 subscriptions, and the dates and times (all in GMT) when John Doe 2 subscribed to and 2 subsequently disabled renewal for them, are as follows:

3	No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
4	1.		4/21/2019 10:25	4/21/2019 10:28
5	2.		5/2/2019 11:59	5/2/2019 12:00
7	3.		5/24/2019 20:09	5/24/2019 20:09
	4.		7/30/2019 6:18	8/29/2019 5:02
9	5.		7/31/2019 10:46	8/31/2019 8:49
10	6.		9/17/2019 9:22	10/8/2019 8:06
11	7.		9/20/2020 22:40	9/21/2020 0:25
2	8.		9/21/2020 0:23	9/21/2020 0:25
13   -	9.		9/23/2020 2:00	9/24/2020 4:17
5	10.		10/21/2020 23:01	10/21/2020 23:02
6	11.		12/2/2020 17:49	12/2/2020 17:49
7	12.		12/23/2020 3:43	12/23/2020 3:44
8	13.		1/20/2021 7:06	1/20/2021 7:10
9	14.		1/28/2021 6:32	1/28/2021 6:32
20   -	15.		4/27/2021 5:57	4/27/2021 5:57
22	16.		7/4/2021 16:16	7/5/2021 3:45
23	17.		9/21/2021 5:31	9/25/2021 4:37
24    <sup>L</sup>				

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
18.		10/3/2021 22:34	10/3/2021 22:34
19.		10/19/2021 5:17	10/19/2021 5:17
20.		11/15/2021 20:32	11/15/2021 20:32
21.		12/10/2021 4:58	12/10/2021 4:58
22.		1/9/2022 2:06	1/9/2022 2:06
23.		1/28/2022 2:52	1/28/2022 2:52
24.		2/3/2022 12:41	2/3/2022 12:41
25.		2/3/2022 12:48	2/3/2022 12:48
26.		2/3/2022 13:58	2/3/2022 13:58
27.		2/3/2022 19:03	2/3/2022 19:03
28.		2/5/2022 6:20	2/5/2022 6:23
29.		2/6/2022 8:12	2/6/2022 8:12
30.		2/13/2022 21:45	2/13/2022 21:45
31.		2/15/2022 5:21	2/15/2022 5:21
32.		3/3/2022 0:39	3/3/2022 0:39
33.		3/29/2022 21:43	3/30/2022 0:07
34.		3/29/2022 23:36	3/30/2022 7:13
35.		3/30/2022 0:04	3/31/2022 19:32

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
36.		4/5/2022 20:21	4/5/2022 20:22
37.		4/23/2022 5:10	4/23/2022 5:10
38.		6/5/2022 5:43	6/5/2022 5:49
39.		6/21/2022 6:10	6/25/2022 8:14
40.		6/21/2022 6:47	6/25/2022 8:13
41.		8/10/2022 9:10	8/10/2022 9:10
42.		8/13/2022 7:41	8/13/2022 7:41
43.		8/15/2022 9:25	8/15/2022 9:26
44.		8/29/2022 6:38	8/29/2022 6:39
45.		9/5/2022 5:56	9/5/2022 5:56
46.		9/6/2022 1:27	9/6/2022 1:43
47.		9/6/2022 1:43	9/6/2022 1:43
48.		9/6/2022 1:49	9/6/2022 1:49
49.		9/15/2022 5:22	9/15/2022 5:56
50.		10/12/2022 5:56	10/21/2022 6:43
51.		11/14/2022 5:52	11/14/2022 5:52

52. In addition, after subscribing to "2022, John Doe 2 subscribed to and disabled renewal for 5 subscriptions to OnlyFans Creators prior to the renewal date. These 5 subscriptions, and the dates and times (all GMT) when John Doe 2 subscribed to and subsequently disabled renewal for them, are as follows:

No.	Creator	Subscribe Date/Time (GMT)	Renewal Disabled Date/Time (GMT)
1.		12/27/2022 6:40	12/27/2022 6:42
2.		1/15/2023 6:04	1/17/2023 7:36
3.		3/16/2023 7:33	3/16/2023 7:33
4.		4/4/2023 23:52	4/4/2023 23:52
5.		4/24/2023 5:34	4/25/2023 17:16

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed June 22, 2023.

\_\_\_\_\_

Lee Taylor